



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable John C. Marburger
County Attorney
Fayette County
LaGrange, Texas

Dear Mr. Marburger:

Opinion No. 9-6144

Re: Is the issuing of fishing, hunting and trapping licenses by the County Clerk considered official services performed by that office? Also related question.

Your communication dated August 1, 1944, directed to this department, reads in part as follows:

"I would appreciate it very much if you would give me your opinion on the following questions:

"1. Is the issuing of fishing, hunting and trapping licenses, by the County Clerk considered official services performed by that office?

"2. Would the County Clerk be permitted to retain fees for personal use when issuing Fishing, hunting and trapping license or is such fees to be deposited into the Officers' Salary Fund of the County.

"In considering the above questions I have consulted articles 4018, 4020, 4030, 4032A, R.C.S. and articles 894, 895, 923 as section 3 P. C. and article 3912e section 3 R.C.S.

"I have not been able to locate any statute that specifically requires the County Clerk to issue any of these licenses, but there are many

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instances that he is authorized to do so and fixes his fees. Apparently, if and when he issues such licenses he does so as County Clerk, and some times he is required to issue them under his seal of office. See Article 395 P.C. This, therefore, would appear to be fees of his office, and therefore the County Clerk should account for them to the county.

"It is therefore my opinion that question No. 1 should be answered in the affirmative and question No. 2, that such fees should be deposited into the Officers' Salary Fund of this County as is required by article 3912e section 5 A.C.S."

The following statutory provisions are pertinent to the questions propounded.

By Sec. 5 of Article 3912e, V.A.C.S., it is provided that:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer."

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Article 4032a, V.A.C.S., provides in part as follows:

"Sec. 1. No person who is a nonresident of the State of Texas or who is an alien shall fish in the fresh waters of this State without first having procured from the Game, Fish and Oyster Commission of Texas, or a Deputy Game Warden thereof, or from a County Clerk in Texas, or other legally authorized agent, a license to fish; and no person who is a resident of this State shall fish with artificial lures of any kind in the fresh waters of this State without first having procured from the Game, Fish and Oyster Commission of Texas, or a Deputy Game Warden thereof, or from a County Clerk of Texas, or other legally authorized agent, a license to fish.

"Sec. 2. Any officer, deputy or legally authorized agent, issuing any license to fish under the provisions of this Act, shall collect from the person to whom the license is issued the following fees:

"(1) If issued to a resident, the sum of One Dollar and Ten Cents (\$1.10), of which amount he shall retain as his fee Ten (10¢) Cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner on or before the 10th day of the month next succeeding that during which said license was issued.

"(2) If issued to a non-resident or an alien, the sum of Five Dollars (\$5.00), of which amount he shall retain as his fee Twenty-Five (25¢) cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as required under subdivision One (1) of this section; provided that he may issue to such nonresident a license good for only five (5) days, including the day of issuance, upon payment by the licensee of One Dollar and Ten Cents (\$1.10), of which amount the officer so issuing said license shall retain as his fee Ten (10¢) Cents, and the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as provided for in subdivision One (1) of this section.

"The officer issuing such license shall keep a complete and correct record of each fishing license

issued, showing the name and place of residence of each licensee and the serial number and date of issuance of said license, on such form as the Game, Fish and Oyster Commissioner may prescribe; and the stubs of such licenses and the record thereof shall belong to the State of Texas and shall be filed with said Commissioner as and when he may direct."

Article 894, V.A.P.C., provides for the form and requisites of hunting licenses, while Article 895, V.A.P.C., reads in part as follows:

"The county clerk of each county in this State is hereby authorized to issue hunting licenses under his official seal, to all persons complying with the provisions of this Act, and shall fill out correctly and preserve for the use of the Game, Fish, and Oyster Commission, the stubs attached thereto; and the county clerk shall keep a complete and correct record of hunting licenses issued, * * *."

The license fees for hunting with gun are set forth in Article 904, V.A.P.C., the first two paragraphs of which read as follows:

"No citizen of this State shall hunt outside of the county of his residence with a gun without first having procured from the Game, Fish and Oyster Commissioner, or one of his deputies, or from any county clerk in this State, a license to hunt, and for which he shall pay either of such officers the sum of two (\$2.00) dollars; fifteen cents of which amount shall be retained by said officer as his fee for collecting.

"The fee for a non-resident citizen or alien hunting license shall be twenty-five (\$25.00) dollars; three (\$3.00) dollars of such amount shall be retained by the officer issuing such license as his fee for collecting, issuing, and making report on license so issued and for remitting the remaining twenty-two (\$22.00) dollars to the Game, Fish and Oyster Commission."

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By Article 978f, V.A.P.C., the office of Game, Fish and Oyster Commissioner was abolished, and the Game, Fish and Oyster Commission was created. Said Commission was vested with the authority, powers, duties and functions theretofore vested in the Game, Fish and Oyster Commissioner, except where in conflict with said new Act.

Article 923n, V.A.P.C., requires a license for trappers, fixes the fees for resident and non-resident licensees thereunder, and provides for the commissions to be retained by the officer issuing and reporting same.

Article 923o, V.A.P.C., reads in part as follows:

"The Game, Fish and Oyster Commissioner (now the Game, Fish and Oyster Commission) shall cause to be printed blank trapper's license which shall contain the requirements as provided for in Section 9 of this Act (Article 923n, supra), and shall distribute the same to his deputies and to the various county clerks of the State of Texas, taking their receipts therefor * * *, and it is hereby declared to be the duty of the Game, Fish and Oyster Commissioner (now the Game, Fish and Oyster Commission), his deputies and the county clerks of this State to issue licenses as provided in this Act, and to make reports and remittances therefor * * *." (Emphasis ours).

In the light of the foregoing, it is clear that the issuing of hunting, fishing and trapping licenses by the various county clerks of Texas are official services required to be performed by said officers. Also, the commissions authorized to be retained by them are fees of office, which must be accounted for, and deposited in the Officers' Salary Fund of their respective counties.

Your first question is therefore answered in the affirmative.

Your second question is answered as follows: The county clerk is not permitted to retain such fees or commissions for personal use. Same must be deposited in the Offi-

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cers' Salary Fund of the county.

In conclusion we desire to thank you for the able and concise brief which you furnished, and we commend you for the correct conclusions therein reached.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

L. H. Flewellen
L. H. Flewellen
Assistant

LHF:MR

APPROVED AUG 16, 1944

E. J. Blackberry
ATTORNEY GENERAL OF TEXAS

W. J. P.

